

**TMG**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMANA COMPANY, L.P., ET AL.

Defendants.

Civil Action No. 08-6000

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATE 12-29-08 / 1 / A

ATTEST:

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

**COMPLAINT**

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States, and for and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613, for the recovery of costs incurred by the United States in response to the release or threat of release of hazardous substances at the Novak Sanitary Landfill Superfund Site (the "Novak Site" or "Site") located in South Whitehall Township, Lehigh County, Pennsylvania. The United States also seeks a declaratory judgment establishing Defendants' liability for any response costs that may be incurred by EPA in the future, that will be binding in any subsequent action by the United States against Defendants to recover such further response costs.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this District, and because the Site is located in this District.

### **DEFENDANTS**

4. Each of the below-mentioned defendants is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Amana Company, L.P. is incorporated in the State of Delaware and is doing business in the Commonwealth of Pennsylvania.

6. Agere Systems, Inc. is a Delaware corporation. With respect to the allegations in this Complaint, Defendant Agere Systems is the successor by corporate name change and/or merger to Lucent Technologies, Inc., AT&T, Inc. and Western Electric Corporation, which at all times relevant to this case were doing business in the Commonwealth of Pennsylvania.

7. Air Products and Chemicals, Inc. is incorporated in the State of Delaware and is doing business in the Commonwealth of Pennsylvania.

8. American Nickeloid Company is incorporated in the State of Illinois and is doing business in the Commonwealth of Pennsylvania.

9. Atlas Minerals & Chemicals, Inc. is incorporated in the State of Delaware and is doing business in the Commonwealth of Pennsylvania.

10. Day-Timers, Inc., formerly known as Dorney Printing Company, is incorporated in Delaware and is doing business in the Commonwealth of Pennsylvania.

11. F.L. Smidth, Inc. is incorporated in the State of Delaware and is doing business in the Commonwealth of Pennsylvania.

12. General Electric Company is incorporated in the State of New York and is doing business in the Commonwealth of Pennsylvania.

13. Ingersoll-Rand Company is incorporated in the State of New Jersey and is doing business in the Commonwealth of Pennsylvania.

14. Mack Trucks, Inc. is incorporated in the Commonwealth of Pennsylvania and is doing business in the Commonwealth of Pennsylvania.

15. Macintosh Linen and Uniform Rental, Inc., formerly known as Mary MacIntosh Pennsylvania, Inc., is incorporated in the Commonwealth of Pennsylvania and is doing business in the Commonwealth of Pennsylvania.

16. Pactiv Corporation, formerly known as Packaging Corporation of America, is incorporated in the State of Delaware and is doing business in the Commonwealth of Pennsylvania.

17. PPL Electric Utilities Corporation, formerly known as Pennsylvania Power & Light Company, is incorporated in the Commonwealth of Pennsylvania and is doing business in the Commonwealth of Pennsylvania.

18. The Stanley Works, formerly known as Stanley-Vidmar, Inc., is incorporated in Connecticut and is doing business in the Commonwealth of Pennsylvania.

19. Tarkett Inc. is incorporated in the State of Delaware and is doing business in the Commonwealth of Pennsylvania.

20. Black & Decker (U.S.) Inc. is incorporated in the State of Delaware and is doing business in the Commonwealth of Pennsylvania.

21. Each of the defendants referred to above, or their predecessors in interest, by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such defendant or predecessor, at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

### **GENERAL ALLEGATIONS**

22. The Site occupies approximately 65 acres in the northern portion of South Whitehall Township, Lehigh County, Pennsylvania. The Site is situated on a hillside north of Jordan Creek and south of Orefield Road.

23. The Site operated as a landfill from the mid-1950's to 1985. After suspension of the site permit from 1985 to 1987, the Site was re-opened as a landfill until May 1990. The Site is an inactive landfill.

24. During its periods of operation, the Site was used for the dumping of industrial, commercial, municipal and residential wastes, including, but not limited to, organic and inorganic solvents, slag, industrial strength acids (such as battery acids), paints, inks, resins, epoxies, and various other wastes.

25. These wastes seeped into Site soils and leached into the groundwater underneath the Site.

26. EPA has conducted various "response" activities, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in response to the release or threat of release of hazardous

substances at the Site.

27. EPA contractors conducted an inspection of the Site in 1985. EPA contractors identified the groundwater route as the primary concern due to the substances found in on-site monitoring wells, the close proximity of private residential wells to the landfill, and the existence of public supply wells within a three-mile radius of the Site.

28. On October 4, 1989, EPA placed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B (1983), which is a national list of hazardous waste sites posing the greatest threat to health, welfare and the environment. The National Priorities List was established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

29. On January 11, 1989, sixteen potentially responsible parties (the "Novak PRP Group") entered into an Administrative Order by Consent with EPA for preparation of the Remedial Investigation/Feasibility Study ("RI/FS") of the Site to examine the various possible means of remedying the contamination at the Site.

30. In June 1992, the Remedial Investigation ("RI") was completed. The RI reported that numerous hazardous substances were detected in Site soils, sediments and groundwater, including, but not limited to, 27 volatile organic chemicals ("VOCs"), 10 semi-VOCs, and 22 metals and inorganics. Included, among other things, are acetone, benzene, chlorobenzene, chloroethane, ethylbenzene, trichloroethylene, toluene, vinyl chloride, xylene, arsenic, cadmium, beryllium, chromium, copper, lead, nickel, silver and zinc. All of these are listed as hazardous substances at 40 C.F.R. Part 302, Table 302.4 (1987), and are therefore "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. Based on information collected during the RI/FS, EPA selected a remedy for the Site in a Record of Decision ("ROD") that it issued on September 30, 1993, and in which the Commonwealth of Pennsylvania concurred. The ROD required, *inter alia*, the remediation of the groundwater, capping of the portions of the Site being remediated, and additional investigation of contamination in certain portions of the Site.

32. On June 30, 1995, the United States issued a Unilateral Administrative Order, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring sixteen potentially responsible parties to perform the Remedial Design and Remedial Action at the Site. By late 2003, these complying parties had substantially completed the Remedial Design and physical construction of the Remedial Action for the Site. Certain operations and maintenance activities continue to be performed at the Site.

33. In February 1997 the United States instituted an action in this Court under Section 107 of CERCLA, 42 U.S.C. § 9607, to recover its past response costs incurred in connection with the response actions described in the foregoing paragraphs. *See United States v. Air Products and Chemicals, et al.* (Civil Action No. 97-CV-0674).

34. On December 30, 1998, this Court approved and entered a consent decree between the United States and the named defendants regarding the Site, and terminated the action. Pursuant to this settlement, the named defendants paid a total of \$1,035,931.72 to the United States in reimbursement of a portion of the United States' past response costs incurred through January 9, 1998.

35. Since January 9, 1998, the United States has incurred further unreimbursed response costs in connection with the release and threatened release of hazardous substances at

the Berks Landfill Site. These costs were incurred in connection with sampling and enforcement activities, as well oversight of the remedial design and remedial action, and were incurred in a manner not inconsistent with the National Contingency Plan ("NCP"), promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605.

36. In addition, the United States is continuing to incur response costs, including costs and expenses in seeking to recover money spent at the Site. Those further past costs and all future costs are part of the declaratory judgment prayer for relief for further costs.

### **CLAIM FOR RELIEF**

37. The allegations contained in paragraphs 1-36 are realleged and incorporated herein by reference.

38. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substances, shall be liable for —
  - (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent

with the national contingency plan . . . .

39. Defendants are each within the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

40. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

41. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the Site at times relevant to this action.

42. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or the threat of releases of hazardous substances into the environment at or from the Site at times relevant to this action.

43. The actions taken by the United States in connection with the Site constitute “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with which the United States has incurred costs.

44. The costs incurred by the United States in connection with the Site were not inconsistent with the National Contingency Plan, which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300 et seq.

45. The United States will continue to incur response costs in connection with the Site.

46. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), all defendants are jointly and severally liable to the United States for all costs incurred and to be incurred by the United States in connection with the Site, including prejudgment interest on all such costs.



**PRAYER FOR RELIEF**

WHEREFORE, plaintiff United States of America prays

that this Court:

1. Enter judgment in favor of the United States and against defendants, jointly and severally, for costs incurred by the United States, including prejudgment interest, for the previously identified response actions related to the Site;
2. Enter a declaratory judgment as to defendants' liability that will be binding in subsequent actions to recover further response costs incurred by the United States for response actions related to the Site;
3. Award the United States its costs of this action; and,
4. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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